complete in itself, and the power may or may not be exercised.[10] The courts will never compel the exercise of this power in the first instance.[11] And they are unanimous in declaring that to the extent to which discretionary power is vested in a trustee they cannot interfere in its reasonable exercise, in the absence of bad faith or fraud.[12] In view, therefore, of the freedom granted to holders of discretionary powers, it seems doubly wise that they should be limited to persons appearing to have been within the contemplation of the creator of the trust.[13]

RECENT CASES.

ADMIRALTY — TORTS — PRIORITY OF MARITIME LIENS. — A tug collided with three vessels, at different times. The owners of each filed libels, but the proceeds of sale were insufficient to satisfy all three decrees. *Held*, that the liens are entitled to priority in inverse order of the collisions. *The America*, 168 Fed. 424 (D. C., N. J.).

American admiralty law regards a vessel as a responsible thing, having capacity to make contracts and commit torts. See *The John G. Stevens*, 170 U. S. 113. A person damaged by her acquires a maritime lien, a proprietary interest, enforceable, regardless of the liability of the owner, by a libel directly against the vessel. *The Barnstable*, 181 U. S. 464. No importance is attached to the time of obtaining the decree. *The J. W. Tucker*, 20 Fed. 129. It is settled that a lien for tort has precedence over a lien for previous supplies. *The John G. Stevens*, *supra*. The doctrine of such cases is that when the vessel continues in navigation, the lienholder necessarily submits his interest to all maritime perils, one of which is the liability of the vessel for torts. *The America*, Fed. Cas. No. 288; *The Frank G. Fowler*, 8 Fed. 331. It has been urged that as the first lien is good against a purchaser without notice, it ought not to be prejudiced by any subsequent interest. *The Frank G. Fowler*, 17 Fed. 653. The basis for the second lien, however, is not a contract, but the absolute liability of the vessel for her wrongs. Hence the holding of the principal case is strictly in accordance with admiralty principles.

ADVERSE POSSESSION — CONSTRUCTIVE POSSESSION — COLOR OF TITLE. — X gave Y a deed for land which covered more than the land which X actually owned. *Held*, that the fact that title to a part of the land actually passed does not prevent the acquisition of constructive possession under the deed. *Roe* v. *Tenn. Ry. Co.*, 50 So. 230 (Ala.). See Notes, p. 56.

AGENCY — AGENT'S LIABILITY TO THIRD PERSONS — PROMISSORY NOTE SIGNED BY AUTHORIZED AGENT. — A promissory note was signed as follows: "J. H. Smethurst's Laundry and Dye Works Limited, — J. H. Smethurst, Managing Director." The words J. H. Smethurst were written by the defendant, and the rest of the signature was impressed by a rubber stamp. *Held*, that the defendant is not personally liable on the note. *Chapman* v. *Smethurst*, 100 L. T. R. 465 (Eng., Ct. App., Mch. 4, 1909).

An agent who puts his name to a note, without making it appear upon the face of the note that it was intended that only the principal should be liable, will be

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[10] Cole *v.* Wade, 16 Ves. 27.
[11] French *v.* Northern Trust Co., 197 Ill. 30.
[12] Hallinan *v.* Hearst, 133 Cal. 645.
[13] See *In re* Rumney & Smith, [1897] 2 Ch. 351.

liable thereon. *Price* v. *Taylor*, 5 H. & N. 540. Besides naming his principal, an agent must express by some form of words that the writing is the act of the principal, though done by the hand of the agent. *Tucker Mfg. Co.* v. *Fairbanks*, 98 Mass. 101. This is sufficiently expressed, if the face of the instrument, when interpreted as it would generally be understood, shows that the parties intended that the principal only should be liable. *Liebscher* v. *Kraus*, 74 Wis. 387. *Contra*, *Heffner* v. *Brownell*, 70 Ia. 591. The same result has been reached under the Negotiable Instruments Law, which provides that when an instrument contains words indicating that the agent signs for or on behalf of a principal, he is not liable on the instrument, if duly authorized. See N. Y. Laws 1897, c. 612. *Western Grocer Co.* v. *Lackman*, 75 Kan. 34. The principal case finally disposes of a *dictum* by Lord Ellenborough that the agent whose name appears on a negotiable instrument, will be liable thereon, unless it also appears in so many words that he subscribes for another. See *Leadbitter* v. *Farrow*, 5 M. & S. 345.

AGENCY — PRINCIPAL'S LIABILITY TO THIRD PERSONS IN TORT — RESPONDEAT SUPERIOR NOT APPLIED TO GRATUITOUS SERVICE. — The defendant's servants were authorized to give away old barrels. The plaintiff was injured through the negligence of the defendant's employee in throwing such a barrel to the plaintiff's companion. *Held*, that the defendant is not liable. *Wallace* v. *John A. Casey Co.*, 132 N. Y. App. Div. 35.

The weight of American authority exempts charitable corporations from liability for their servants' negligence on the ground that it would be unjust to subject the master to the incidental burdens of the servant's employment, when he derives no pecuniary benefit therefrom. *Hearns* v. *The Waterbury Hospital*, 66 Conn. 98; *McDonald* v. *Massachusetts General Hospital*, 120 Mass. 432. Upon this theory there is no logical ground for distinguishing charitable corporations from business corporations or individuals dispensing charitable gifts. See *Union Pac. Ry. Co.* v. *Artist*, 60 Fed. 365. As the recipient, and not the dispenser of the charity, is the real beneficiary of the servant's labor, this doctrine seems just. *Cf.* *Powers* v. *Massachusetts Homœopathic Hospital*, 101 Fed. 896. The theory has been advanced that the recipient, by accepting a charity, waives the responsibility of the master for the servant's negligence. See *Kellogg* v. *Church Charity Foundation of Long Island*, 128 N. Y. App. Div. 214. The present case expresses the same idea in another form; the recipient must be held to have assumed the risk of the servant's negligence. The reasoning is analogous to that of the fellow-servant doctrine. *Cf.* *Farwell* v. *Boston & Worcester R. R. Corp.*, 4 Met. (Mass.) 49. Although founded on fiction, it seems to lead to a correct result.

BANKRUPTCY — DISCHARGE — EFFECT UPON OBLIGATIONS OF BANKRUPT AS LESSEE. — After renewing his lease, but before the beginning of the new term, a lessee filed a voluntary petition in bankruptcy. After the beginning of the new term, he was adjudged a bankrupt and discharged. Under a statute giving the landlord a lien on the tenant's goods for the entire rent to accrue, the landlord attached the stock of goods allowed to the bankrupt as an exemption. *Held*, that the landlord has a lien for future rent. *Shapiro* v. *Thompson*, 49 So. 391 (Ala.).

A tenant's discharge in bankruptcy does not release him from liability for rent to accrue under a subsisting lease, for it is well settled that future rent is not a provable claim. *Watson* v. *Merrill*, 136 Fed. 359. The landlord, therefore, must look to the bankrupt personally for his security, unless their relation as landlord and tenant is severed by the adjudication. On this latter point there is a conflict of authority. It has been held that the adjudication *ipso facto* terminates the lease. See *In re Jefferson*, 93 Fed. 948. But the better view appears to be that the leasehold, like any other property of the bankrupt, goes to the trustee, subject to his right of disclaimer. *In re Pennewell*, 119 Fed. 139; *White* v. *Griffing*, 44